



## DEPARTMENT OF LABOR

[Docket No: DOL-2021-00##]

### Privacy Act of 1974; System of Records

**AGENCY:** Employment and Training Administration (ETA)

**ACTION:** Notice of a modified system of records.

**SUMMARY:** As required by the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A-108, this modified Privacy Act System of Records is titled Foreign Labor Certification System and Employer Application Case Files, DOL/ETA-7. The system contains information provided by members of the public (Employers) who file labor certification applications, labor condition applications for permanent or temporary employment of foreign workers; employers who file requests for prevailing wage determinations that may support an application for temporary and permanent labor certification; agents and foreign labor recruiters whom employers may engage in the recruitment of prospective H-2B workers with regard to labor certification applications filed in the H-2B temporary employment program and all persons or entities hired by or working for such recruiters or agents and any agents or employees of those persons or entities.

**DATES:** *Comment Dates:* We will consider comments that we receive on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

*Applicable date:* This notice is applicable upon publication, subject to a 30-day review and comment period for the routine uses.

**ADDRESSES:** We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail, hand delivery, or courier: 200 Constitution Avenue, N.W., N-5311, Washington, DC. In your comment, specify Docket ID DOL–2021–00##.
- Federal mailbox: <https://dol.gov/privacy>

All comments will be made public by DOL and will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** To submit general questions about the system, contact Brian Pasternak by telephone at 202-513-7350, or by email at [Pasternak.Brian@dol.gov](mailto:Pasternak.Brian@dol.gov).

**SUPPLEMENTARY INFORMATION:** DOL is modifying a system of records, DOL/ETA-7, subject to the Privacy Act of 1974, 5 U.S.C. 552a. The purpose of this system of records is to house information provided by employers who file labor certification application; who request prevailing wage determinations that may support temporary or permanent labor certifications; agents and foreign labor recruiters whom employers may engage in the recruitment of prospective H-2B workers with regard to labor certification applications filed employment program, and all persons or entities hired by or working for such recruiters or agents and any agents, or employees of those persons or entities. The foreign worker is identified on applications for permanent employment certification, they are not identified nor listed on applications for temporary employment certification, prevailing wage determination, nor labor condition applications.

The Department now proposes a change to an existing routine use to include disclosures to the Department of Justice (DOJ), Civil Rights Division, among the list of participating agencies with which the Department may share information from the system in connection with administering and enforcing related immigration laws and regulations. In addition, the Department is eliminating the term “alien” from the title and description of the system of records notice. The Civil Rights Division’s Immigrant and Employee Rights Section (IER) is responsible

for enforcing the anti-discrimination provision of the Immigration and Nationality Act (INA), 8 U.S.C. 1324b.

### **Privacy Act**

As required by the Privacy Act (specifically 5 U.S.C. 552a(r)) and implemented by the Office of Management and Budget (OMB) Circular A-108, DOL has provided a report of this system of records to the Office of Information and Regulatory Affairs, Office of Management and Budget; the Chairman, Committee on Government Reform and Oversight, House of Representatives; and the Chairman, Committee on Governmental Affairs, United States Senate.

**SYSTEM NAME AND NUMBER:** Foreign Labor Certification System and Employer Application Case Files, DOL/ETA-7.

**SECURITY CLASSIFICATION:** Unclassified.

### **SYSTEM LOCATION:**

The U.S. Department of Labor (DOL) Office of Employment and Training Administration (ETA) owns the Foreign Labor Certification System and Employer Application Case Files records system, which is housed in secure alternative worksites, including employees' homes, within continental United States geographically satellite offices. All appropriate safeguards will be taken at these sites.

### **SYSTEM MANAGER(S):**

Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, N-5311, 200 Constitution Ave. NW, Washington, DC 20210.

### **AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Immigration and Nationality Act, as amended, 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1184(c), 1182(m) and (n), 1182(a)(5)(a), 1188, and 1288. Section 122 of Pub. L. 101 - 649. 8 CFR 214.2(h). 20 CFR 655 Subpart A. 20 CFR 655.9.

### **PURPOSE(S) OF THE SYSTEM:**

To capture and maintain a record of applicants and actions taken by ETA on requests to employ foreign workers and requests for prevailing wage determinations.

#### **CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The Foreign Labor Certification System and Employer Application Case Files, DOL/ETA-7 contains records related to employers of foreign workers for both part-time and permanent employment. The employers who file requests for prevailing wage determinations that may support an application for temporary and permanent labor certification; agents and foreign labor recruiters whom employers may engage in the recruitment of prospective H-2B workers with regard to labor certification applications filed in the H-2B temporary employment program and all persons or entities hired by or working for such recruiters or agents and any agents or employees of those persons or entities.

#### **CATEGORIES OF RECORDS IN THE SYSTEM:**

Employers' names, addresses, type, and size of businesses to include annual gross revenue and proof of insurance coverage, production data, number of workers needed in certain cases, offer of employment terms to known or unknown beneficiaries, and background and qualifications of certain beneficiaries, along with resumes and applications of U.S. workers, employer provided source wage documents and surveys, names of agents and recruiters whom employers may engage in the recruitment of prospective H-2B workers, as well as the identity and location of all persons or entities hired by or working for such recruiters or agents, and any of the agents or employees of those persons and entities, engaged in recruitment of prospective workers for the H-2B job opportunities offered by the employer.

#### **RECORD SOURCE CATEGORIES:**

Information contained in this system is obtained from labor certification applications, labor condition applications, and prevailing wage determination requests completed by employers. Certain information is furnished by named beneficiaries of permanent labor certification

applications, State Workforce Agencies, and the resumes and applications of U.S. workers.

Additional information is obtained from employer-provided surveys.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, and universal routine uses previously published and listed at <https://www.dol.gov/agencies/sol/privacy/intro>, 81 Fed. Reg. 25765, 25775 (April 29, 2016), information in this system may be disclosed outside DOL as a routine pursuant to 5 U.S.C. 552a(b)(3) as follows:

- a. To disclose the records to the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is for a purpose that is compatible with the purpose for which the agency collected the records.
- b. To disclose the records in a proceeding before a court or adjudicative body, when: (a) the agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.
- c. When a record on its face, or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order

issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the agency determines by careful review that the records or information are both relevant and necessary to any enforcement, regulatory, investigative or prosecutive responsibility of the receiving entity, and that the use of such records or information is for a purpose that is compatible with the purposes for which the agency collected the records.

- d. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.
- e. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.
- f. To disclose to contractors, employees of contractors, consultants, grantees, and volunteers who have been engaged to assist the agency in the performance of or working on a contract, service, grant, cooperative agreement or other activity or service for the Federal Government.

Note: Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a; see also 5 U.S.C. 552a(m).

- g. To the parent locator service of the Department of Health and Human Services or to other authorized persons defined by Pub. L. 93 - 647 (42 U.S.C. 653(c)) the name and current address of an individual for the purpose of locating a parent who is not paying required child support.

- h. To any source from which information is requested in the course of a law enforcement or grievance investigation, or in the course of an investigation concerning retention of an employee or other personnel action, the retention of a security clearance, the letting of a contract, the retention of a grant, or the retention of any other benefit, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.
- i. To a Federal, State, local, foreign, tribal, or other public authority of the fact that this system of records contains information relevant to the hiring or retention of an employee, the granting or retention of a security clearance, the letting of a contract, a suspension or debarment determination or the issuance or retention of a license, grant, or other benefit.
- j. To the Office of Management and Budget during the coordination and clearance process in connection with legislative matters.
- k. To the Department of the Treasury, and a debt collection agency with which the United States has contracted for collection services, to recover debts owed to the United States.
- l. To the news media and the public when (1) the matter under investigation has become public knowledge, (2) the Solicitor of Labor determines that disclosure is necessary to preserve confidence in the integrity of the Department or is necessary to demonstrate the accountability of the Department's officers, employees, or individuals covered by this system, or (3) the Solicitor of Labor determines that there exists a legitimate public interest in the disclosure of the information, provided the Solicitor of Labor determines in any of these situations that the public interest in disclosure of specific information in the context of a particular case outweighs the resulting invasion of personal privacy.
- m. To disclose information to a State or local government entity which has the legal authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice law or a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity for

the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named attorney or health care professional.

- n. To disclose information to the United States Department of Justice and/or the Federal Bureau of Investigation for inclusion in the National Instant Criminal Background Check System (NICS), pursuant to the reporting requirements of the Brady Handgun Violence Prevention Act, as amended by the NICS Improvement Amendments Act of 2007.
- o. To appropriate agencies, entities, and persons when (1) the DOL suspects or confirms a breach of the System of Records; (2) the DOL determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DOL (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DOL's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.
- p. To another Federal agency or Federal entity, when the DOL determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.
- q. To participating agencies within DOL and externally that participate within the case file development in processing labor certification applications, labor condition applications, and prevailing wage determinations released to the employers (and representatives) filing such applications; to review ETA actions in connection with appeals of denials or other wage-related final determinations before the Office of Administrative Law Judges (OALJ) or Federal Courts; to participating agencies such as the DOL Office of Inspector General (OIG), DOL Wage and Hour Division (WHD), Department of Homeland



Security (DHS), United States Citizenship and Immigration Services, Department of State, and Department of Justice (DOJ), Civil Rights Division in connection with administering and enforcing related immigration laws and regulations. Records may also be released to named beneficiaries or their representatives, and third party requests under the under the Freedom of Information Act.

- r. To the public for the same purposes stated above (Routine Use q.), including current or prospective H-2B workers or their employer's representatives, to assist in the effective use of the H-2B temporary labor certification program. The Department will maintain a publically available list of agents, recruiters and the locations of employers reported to the Department that engage/plan to engage in recruitment of prospective H-2B workers/opportunities offered by the employer.

#### **POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Electronic records in this system of records are stored on security measure protected (for example, e-authentication, password, restricted access protocol, etc.) databases, electronically on e-media devices (e.g. computer hard drive, magnetic disc, tape, digital media, CD, DVD, etc.).

Paper copies of records are stored within secured or locked facilities.

#### **POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records may be retrieved by an individual's case number, employer name, name, beneficiary's name, agent name, recruiter name, or other third-party entity involved in the recruitment of the prospective H-2B workers as provided to the Department.

#### **POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records are maintained in file folders and DOL computer systems at applicable locations as set out above under the heading "System Location." System records will be retained and disposed of after 5 years in according to DOL's records maintenance and disposition and applicable General Records Schedules (Number DAA-0369-2013-0002). Paper copies of case

files that are not scanned are retained after the retention period will be transferred to Federal Records Center for duration of 5-year retention period.

#### **ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Records in this system of records are safeguarded in accordance with applicable rules and policies, including all applicable DOL automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system of records is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate security clearances or permissions.

Records in the system are protected from unauthorized access and misuse through a combination of administrative, technical, and physical security measures. Administrative measures include but are not limited to policies that limit system access to individuals within an agency with a legitimate business need, and regular review of security procedures and best practices to enhance security. Technical measures include but are not limited to system design that allows only role-based access to authorized personnel; required use of strong passwords that are frequently changed; and use of encryption for certain data transfers. Physical security measures include but are not limited to the use of data centers which meet government requirements for storage of sensitive data, physical security maintained in secured locations.

#### **RECORD ACCESS PROCEDURES:**

If an individual wishes to access their own data in the system after it has been submitted, that individual should consult the System Manager.

#### **CONTESTING RECORD PROCEDURES:**

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain:

- Name, and
- Any other pertinent information to help identify the file.

**NOTIFICATION PROCEDURES:**

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to the individual from the System Manager above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

The previously published versions of this SORN can be found at 81 FR 25765, 25885 (April 29, 2016), and 77 FR 1728, 1742 (January 11, 2012).

**Milton Al Stewart,**

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